

Date Issued: January 24, 1985 (AGO 85-4)

Requested by: Alan Person, Executive Director
North Dakota Public Employees
Retirement System

- QUESTION PRESENTED -

Whether N.D.C.C. section 54-52-05 and N.D.C.C. section 15-10-01, require Lake Region Community College to pay its employees' four percent retirement contribution to the Public Employees Retirement System.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that N.D.C.C. section 54-52-05, and N.D.C.C. section 15-10-01, do not require Lake Region Community College to pay its employees' four percent retirement contribution to the Public Employees Retirement System.

- ANALYSIS -

Prior to July 1, 1983, employees in state government covered by the Public Employees Retirement System (PERS) contributed four percent of their gross salary to PERS. The 1983 North Dakota Legislature, in lieu of appropriating money for general salary increases, appropriated enough money in agency budgets for the employers to pick up two percent of the employees retirement contribution after July 1, 1983, and an additional two percent after July 1, 1984. On July 1, 1984, pursuant to 1983 N.D. Session Laws 192, jurisdiction over Lake Region Community College was transferred from the Devils Lake School District to the North Dakota State Board of Higher Education. Thus, Lake Region Community College is now a state agency.

The question is whether in view of N.D.C.C. section 54-52-05, and the May 1983 guidelines from the Office of Management and Budget, Lake Region Community College is not now required to pay the four percent retirement contribution for their employees. Currently, Lake Region Community College is only contributing the 5.12 percent employer contribution.

N.D.C.C. section 54-52-05(3), specifically makes payment of the employee's contribution optional. That section begins as follows:

54-52-05. MEMBERSHIP AND ASSESSMENTS - EMPLOYER PAYMENT OF
EMPLOYEE CONTRIBUTIONS.

* * *

3. Each employer, at its option, may pay the employee
contributions required by subsection 2 . . .

The section continues with numerous sentences that begin "if contributions are paid" The express language of N.D.C.C. section 54-52-05, compels the conclusion that payment of the employee's contribution is not mandatory. Certainly state employees have routinely received what has become known as the "2+2" retirement

contribution benefit. There is a significant difference, however, between the appropriation laws relative to Lake Region Community College, which previously was under the jurisdiction of the political subdivision school district pursuant to N.D.C.C. chapter 15-18, and other state agencies.

1983 N.D. Session Laws 7 is the appropriation bill for the state's three junior colleges. Section 3 of that bill states as follows:

SECTION 3. LEGISLATIVE INTENT. It is the intent of the legislative assembly that the salaries and wages line item appropriated in section 1 of this Act to the University of North Dakota-Williston center provide for the payment of a two percent contribution to retirement on wages earned after July 1, 1983, and an additional two percent contribution on wages and salaries earned after July 1, 1984, in addition to sufficient amounts to pay the increased cost of medical insurance coverage. It is the further intent of the legislative assembly that the salaries and wages line items appropriated in section 1 of this Act to Bismarck Junior College and Lake Region Community College provide compensation adjustments as negotiated and agreed upon by each institution's respective board. (Emphasis supplied).

This section provides that while the intent of the Legislature for UND-Williston was to appropriate the "2+2", Lake Region Community College compensation was to be adjusted pursuant to negotiation with "its respective board." The Lake Region Community College Board of Trustees did not provide for payment of the four percent contribution. Instead, salaries were increased at Lake Region Community College. Generally, these salary increases were not received by other Higher Education state employees.

An examination of the Statement of Purpose of amendments to various state agency appropriation bills found in the House Journal (see, for example, 1983 House Journal 2984-2990 which is the Statement of Purpose for other institutions of higher education) indicates that the "2+2" was intended to be paid from the appropriated salary line item. (Note, however, that the Statement even states that the appropriation "will allow" payments on the "2+2"). The Statement of Purpose, on the other hand, for the appropriation for Lake Region Community College does not so provide. 1983 House Journal 3004. Since UND-Williston is specifically treated like other state agencies and given the "2+2" and Lake Region Community College is not, it seems clear that the Legislature did not intend to mandate the "2+2" for Lake Region Community College.

I have examined the May 19, 1983, Office of Management and Budget Position Statement on implementing the "2+2". Even assuming that directive to have any legal effect on the North Dakota State Board of Higher Education, I do not find that it was intended to require Lake Region Community College to pay the employee contribution, particularly when Lake Region Community College only became a state agency after the OMB Memorandum was issued, and more particularly in view of legislative intent as expressed in the appropriation bills previously referred to.

This opinion does not preclude the possibility of legislation being introduced this session to provide for payment of the four percent retirement for the last year of this biennium. It is my understanding that Lake Region Community College employees will have the four percent paid by the institution after June 30, 1985.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. section 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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